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MEMORANDUM ON BEHALF OF RESPONDENTS.

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 434.

J. CONGDON SEABURY, AS RECEIVER OF THE CITY NATIONAL BANK OF SUMTER, S. C., A NATIONAL BANKING ASSOCIATION,
PETITIONER,

vs.

BEATRICE C. GREEN, ADMINISTRATRIX D. B. N., C. T. A. OF THE ESTATE OF MOSES GREEN, DECEASED, ET AL., RESPONDENTS.

MEMORANDUM ON BEHALF OF RESPONDENTS IN REPLY TO PETITION FOR WRIT OF CERTIORARI, AND THE PETITIONER'S BRIEF THEREOF.

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SUBJECT INDEX

Page.

Re-Statement of Issues and of Questions Presented.. 1

Legal Questions:

1. Is Federal Question Raised?. 4

2. Does State Decision Violate Constitution?. 4

TABLE OF CASES CITED.

Crary v. *Devlin*, 154 U. S. 619 5

Kennard v. *Nebraska*, 186 U. S. 304. 5

Chemical National Bank v. *Hartford Deposit Co.*, 161 U. S. 1. 5

Capital National Bank v. *First National Bank*, 172 U. S. 425. 5

Browne v. *Union Pacific Railroad Company*, 267 U. S. 255. 5

Howat v. *Kansas*, 258 U. S. 181. 5

McCoy v. *A. S. J. Shaw*, 277 U. S. 302. 5

Broad River Power Co. v. *S. C.*, 281 U. S. 537. 5

King v. *West Virginia*, 216 U. S. 92. 7

Moss v. *Rainey*, 239 U. S. 538 7

John v. *Paullin*, 231 U. S. 583. 7

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RE-STATEMENT OF ISSUES PRESENTED BY PETITION.

In the court of original jurisdiction (Court of Common Pleas of Sumter County, South Carolina), the questions presented arose upon the following material facts (presented by admissions in the pleadings and by an agreed statement of facts):

Moses Green died in March, 1927, while the owner of a number of shares of stock of City National Bank of Sumter, South Carolina. This stock passed under the residuary clause of Mr. Green's will. Four shares of the stock in this manner came into the hands of the three infant respondents, grandchildren of the testator. The testator's estate was duly wound up, and the executor discharged. Thereafter, in July, 1932, the bank closed. In August, 1932, payment of the stockholder's liability was demanded of the infants, through their guardian. The demand being refused, an administratrix d. b. n., c. t. a., of the estate of Moses Green was appointed, and the receiver of the bank brought suit to recover the liability on the four shares in question. The defendants in this suit were the administratrix, the adult legatees and devisees of the testator, and the infant stockholders.

The material questions presented upon this state of facts were:

I.

Could the liability in question be enforced against such of the property of the infant stockholders as they had received under their grandfather's will?

II.

If the first question is answered in the negative, could the liability be enforced against the testator's estate as such, thereby subjecting to the liability the property devised to adults and infants alike?

The court held (transcript, folios 87, *et seq.*) (1) that the liability is enforceable against the property which the infants took as legatees and devisees under the will of their grandfather; (2) that if such property proved insufficient to discharge the liability, the property received under the will by the adult legatees and devisees should be subjected to the liability.

The appeal told the Supreme Court of South Carolina was prosecuted "by the administratrix d. b. n., c. t. a. of the estate of Moses Green, deceased, and on behalf of the infant defendants herein". (Transcript, p. 1.)

The Supreme Court of South Carolina, reversing the lower court, held: (1) that the property received by the infant stockholders under their grandfather's will could not be subjected to the liability; (2) that the estate of the testator is not liable (and that, in consequence, "no liability for this contingent indebtedness can be placed upon any one or more of the defendants").

Seabury [illegible], v. *Green, et al.*, 175 S. E. 639, 641.

As to the governing federal statute imposing the extra liability upon stockholders of national banks, the State Supreme Court made only one comment—that the statute is not "sufficient to cover the very peculiar facts existing in this case." *Ibid*, pp. 641-642.

The petition for the writ of *certiorari* does not touch that part of the decision of the State Supreme Court which exempts from liability the property received by the infants under the will of the devisor of the stock. It challenges (1) that part of the holding which prevents the appellant from holding the infants liable indirectly to the extent of their proportionate interest in the residuary estate of the testator, and (2) that part which, regardless of the status of the infants, holds that the adult respondents (as devisees and legatees of the testator) are not liable to the extent of the property which they received under the will.

It appears that the petition presents only two material questions:

I.

Has the State Supreme Court construed the governing federal statute quoted in the petition, page 10, thereby raising a federal question?

II.

Has the State Supreme Court by its decision violated the "Due Process Clause" of the Federal Constitution, through holding that the adult defendants are not liable, even though (as it is alleged) they did not appeal from the decision of the lower court holding them liable.

LEGAL QUESTIONS.

I.

Has the State Supreme Court construed the governing federal statute quoted in the petition, page 10, thereby raising a federal question?

The statute does not in terms touch the issue. The point in issue is undoubtedly an appropriate subject for Congressional legislation, to insure uniformity of decision throughout the country, as well as for other reasons. However, in the absence of statute, after a testator's estate has been distributed, does not the law of the State determine the status of the title to the testator's property that passes into the hands of his devisees and legatees? If a state statute had been enacted to decree the title free of any lien or claim of a contingent and (at the time of distribution) unenforceable character, its validity would hardly be challenged in this cause. A decision of a court of competent jurisdiction has like effect.

Crary v. *Devlin*, 154 U. S. 619.
Kennard v. *Nebraska*, 186 U. S. 304.
Chemical National Bank v. *Hartford Deposit Co.*, 161 U. S. 1.
Capital National Bank v. *First National Bank*, 172 U. S. 425.

Although in a remote sense the application of a federal statute is involved, there is not only an entire absence of any substantial federal question, but also it is apparent that the problems before the State Supreme Court involved primarily questions of State law, which may be taken to be decisive of all of the material issues presented. The disposition of these questions of State law, involving the status of a title passing from a testator to his legatees and devisees would seem to exclude the idea of a construction of the federal statute in question.

Browne v. *Union Pacific Railroad Company*, 267 U. S. 255.
Howat v. *Kansas*, 258 U. S. 181.
McCoy v. *A. S. J. Shaw*, 277 U. S. 302.
Broad River Power Co. v. *S. C.*, 281 U. S. 537.

II.

Has the State Supreme Court by its decision violated the "Due Process Clause" of the Federal Constitution through holding that the adult defendants are not liable, even though (as it is alleged) they did not appeal from the decision of the lower court holding them liable?

The petitioner predicates his contention in this regard upon the theory that since the lower court held the adults liable, and they did not appeal from this ruling, the State Supreme Court did not have the power to rule that they cannot be held liable under the facts of this case.

The constitutional question thus sought to be raised could and should have been presented in the first instance in the petitioner's petition for a rehearing before the South Carolina Supreme Court. Such a petition was filed (see petition for writ, p. 10).

Under the local practice, opposing counsel are not served with copies of a petition for rehearing in the South Carolina Supreme Court, so that the writer is not informed as to the contents of such petition, but it is a reasonable assumption that the constitutional issue now raised by the petitioner was not presented before the South Carolina Supreme Court, since no contention is made that it was presented.

It would, therefore, appear that this ground of the petition for the writ must fall, because it is presented for the first time in this Court.

It would also appear that this ground should fall, because the petitioner's assumption that the adults were not before the Supreme Court through their failure to take individual appeals is an erroneous assumption. The parties before the State Supreme Court were the administratrix of the testator's estate, and the infant stockholders. Were not the adult defendants thus before the Court by representation? The only theory upon which the administratrix could have been made a party defendant in the beginning was that the liability of the adults and infants alike could be enforced, if declared by the Court, through the administratrix, she standing in the place of the testator.

In all events (disregarding the petitioner's error in basing his position upon the 5th Amendment to the Federal Constitution, when he undoubtedly intended to refer to the 14th Amendment) the action of the State Supreme Court in this case presents no federal question. The decision of the State Supreme Court exempting the adults from liability, amounts to a holding that under the South Carolina law and practice, the Supreme Court has the power to deal with all of the issues presented in the appeal, and to finally dispose of the same as to

all interested parties, even though some of such parties have failed to join in the appeal. In so holding, the State Supreme Court did not infringe any constitutional principle.

King v. *West Virginia*, 216 U. S. 92.
Moss v. *Rainey*, 239 U. S. 538.
John v. *Paullin*, 231 U. S. 583.

Respectfully submitted,

SAMUEL WANT,
Attorney for Respondents.

Darlington, S. C., October 22nd, 1934.